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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

17

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/010,965

Applicant(s)

DATTA ET AL.

Examiner

Karin M. Reichle

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-- Th MAILING DATE of this communication appears on th cover sheet with the correspond nce address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 13-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 14.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restriction***

1. Claims 13-39 are still withdrawn from consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected groups, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 10.

### ***Drawings***

2. The drawings were received on 9-23-03. These drawings, Figures 1-5, are approved by the Examiner. However, see the PTO-948 with this action.

3. It should be noted that the drawings filed 9-29-03 did not comply with 37 CFR 1.121 effective 7-30-03 because the sheets of drawings were not labeled "REPLACEMENT SHEET" nor were the changes made explained in either the drawing amendments or remarks section, i.e. only a general statement that some changes were made was provided. Any further submittal of Figures must be in compliance with 37 CFR 1.121 effective 7-30-03.

### ***Claim Language Interpretation***

4. The first and second ear panels are not required to be formed of only the first and second materials, respectively, so the first and second ear panels are not required to have different basis weights only a respective first and second material thereof is. The first and second materials are not required to be a single layer or only one kind of material (Note claim 10). The terminology "passive bond" is defined as set forth on page 10, lines 1-3 and 4-5, i.e. a

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bond which has a relatively low peel strength such that the bond can be easily broken by hand if desired to assist in inspecting or removing an absorbent article from the wearer and without causing trauma to the wearer or spillage of waste materials from the absorbent article. It is noted that the language “relatively low” and “easily” are considered relative. It is also noted that the claim terminology “manually” is considered redundant, see definition of “passive bond”. It is noted that the terminology “passive bond” does not require tearing or damage or the lack thereof, i.e. as “passive bond” is defined the capability of the bond to be broken with or without tearing or damage is set forth as a preference not a requirement absent specific claim language requiring such, i.e. see the last sections of claims 40-43. The portion of the definition of “passive bond”, i.e. “to assist...article.” supra recites function, capability or property of the “passive bond”. It is also noted that the claim language does not require direct connection of the ear panels together by the “passive bond”. The claims do not require a side seam or seal which include the front ear panel or/and the first material passively bonded to a back ear panel or/and the second material or that tearing the bond totally disconnects the front ear panel from the back ear panel. Additionally in claims 40 and 42-43, the terminology “disconnecting” in the wherein clause is considered to refer back to the terminology “connecting” in the subsection prior to the wherein clause, i.e. the disconnection refers to that of the at least one passive bond.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1, 8 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al '589

With regard to all the claims, see Figures 3-3A, then see Figures 5-7, then see Figure 4. Also see Figures 1-2 and 8, col. 3, lines 56-60, col. 6, line 16-col. 7, line 12, col. 7, line 38-col. 8, line 44 and col. 9, lines 6-42, i.e. the front waist region is 56, the back waist region is 54, the crotch region is 57, the first ear panel is 202 or 200, the second ear panel is 200 or 202, respectively, and the bond is 205, 300, see again Figures 4 and 5 (Note a tearable 205 could also be used as 205 in the embodiment of Figure 4). Panels 200 and 202 are different materials, see again, for example the paragraph bridging cols. 7-8.

With regard to claims 1 and 8, the claim requires the second material having a basis weight greater than the basis weight of the first material. See again the paragraph bridging cols. 7 and 8 and col. 7, lines 6-12 of Johnson (At the very least, one of 200 or 202 could be a single layer of a material and the other of 200 or 202 can be a layer of that material and another layer, i.e. a laminate or "different material" which has a basis weight greater than the one member or since the panels are shown as the same thickness and size but they can be of different materials the members can have different basis weights. It is again noted that panel 200 can be in the front or the rear and 202 in the rear or the front).

With regard to the functions, properties and capabilities of the "passive bond" as defined in the independent claims, see claim language interpretation section supra, the Johnson device includes all the structure of the claims. Therefore there is sufficient factual basis for one to conclude that the functions, properties and capabilities of the claimed structure are inherent in

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the same structure of Johnson. See MPEP 2112.01. Also note Figure 8 which shows tearing of the bond of Johnson increases the size of the waist opening.

With regard to the last subsections of claims 41-43, see Figures, e.g., Figure 4 and 205 in Figures 5-7, i.e. panel 200 or 202 remain in the same form, i.e. is not damaged or the tensile strength is not negatively affected. The elements 200, 202 have a tensile strength such that 205 will tear before 200, 202 do, see again col. 9, lines 28-30. Also note col. 9, lines 20-24.

With regard to the last subsection of claim 40, see col. 7, lines 6-12 and col. 6, lines 23-28 and Figures 5-7, i.e. the front one of 200, 202 can be unitary with 205, i.e. front panel/bond torn but rear panel is not.

### ***Claim Rejections - 35 USC § 103***

7. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson '589.

Claims 2-6 require a specific basis weight of at least one of the materials and claim 7 requires a specific tensile strength of the second material. While the criticality of different basis weights of first and second materials of front and rear ears passively bonded to each other directly to form side seams is disclosed, the criticality of specific basis weights and tensile strengths has not been disclosed. As discussed supra, the general conditions of the claims are taught by the prior art, i.e. materials of different basis weights forming panels bonded together. Therefore, since the general conditions are disclosed by the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See *In re Allen*, 105 USPQ 233.

8. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being obvious over Johnson et al in view of McNichols, '805, and thus also Morman '992.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

In claims 9-10 Applicant claims specific first and second materials of the panels. It is noted that the claims do not limit the panels or materials thereof only to the specified materials, or in other words the ears and materials can include additional elements. In claims 11-12 Applicant claims specific peel strengths. The Johnson et al reference does not explicitly teach such. It is noted however that Johnson et al do teach readily tearable side bonds and that the ear

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lines 15-30, and thereby Morman at Figure 5, Example 3, col. 6, lines 47-54, col. 8, lines 30-40, i.e. a material known in the art suitable for use in disposable articles includes point bonded nonwoven materials as claimed in claim 9 and laminates as claimed in claim 10 and readily tearable bonds of such material have peel strengths as set forth in claims 11 and 12. To employ the materials and peel strengths as taught by McNichols on the Johnson et al device would be obvious to one of ordinary skill in the art in view of the recognition that such materials are known materials in the art suitable for use in disposable articles and that such peel strengths between such materials provide readily tearable bonds and the desire by Johnson to employ any material known in the art that is suitable for use in disposable articles and to provide bonds with such material that are readily tearable. Applicant's attention is also invited to the discussion of prior art infra.

### ***Response to Arguments***

9. Applicant's remarks with respect to matters of form have been noted but are deemed moot in that such issues have not been reraised. Applicant's remarks with regard to the prior art rejections have been considered but are deemed not persuasive because such are narrower than the teachings of Johnson and/or the claim language, Applicant's attention is again invited to the Claim Language Interpretation section supra and the discussion of Johnson in the prior art rejection supra.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Davis shows a tearable side panel between two ear panels. Muller shows breakable



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bond seams between side panels. Blenke et al '430 filed more than a year prior to the earliest effective filing date of the instant application by a different inventive entity discloses releasable side bonds and incorporates Elsberg '287, note col. 7, line 30-col. 8, line 9 and col. 17, lines 29-51 of '287 and col. 10, lines 35-62 of '430. See Larsson, Figure 4.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


The addition of claims 40-43, the claiming of different basis weights in claim 1 and the amendments to the specification at pages 5 and 10 necessitated any new grounds of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 11, 2004